

Appln. No. 10/647,732
Response to Office Action of June 16, 2006

Docket No. 97511.00005

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REMARKS

Claims 6-10 and 16-23 are pending in the current application and stand restricted. Specifically, Examiner states that there are two distinct inventions, and requires Applicant to elect one of the following groups:

- I. Claims 6-10, drawn to inhibiting the proliferation of malignant cells by administration of nucleic acid encoding an E-domain peptide agent, class 514, subclass 44.
- II. Claims 16-23, drawn to inhibiting the proliferation of malignant cells by administration of an E-domain peptide agent, class 514, subclass 12.

In response to the Election/Restriction Requirement set forth in the Office Action dated June 16, 2006, Applicant provisionally elects Group II, Claims 16-23, with traverse. This election is made without prejudice to Applicant's right to pursue coverage of the non-elected embodiments in one or more divisional application(s). In view of the arguments below, Applicant respectfully requests that the Examiner withdraw the restriction requirement.

Applicant believes that Group I and Group II do not represent independent or distinct inventions. The inventions, as claimed, are in the same class, related by design, operation, and effect. Applicant points out that the claims of Group I are intimately associated to the claims of Group II as a nucleic acid and its cognate peptide. It is illusory to refer to the nucleic acid and the protein that it encodes as separate and distinct inventions due to the unique physical and chemical relationship that exists between the two. Furthermore, because of the close relationship that nucleic acid and the peptide it encodes exhibit, Applicant suggests that, contrary to Examiner's contention, it is very unlikely that the literature or the patent art would make reference to one with no reference whatsoever to the other. Therefore, claims 6-10 and 16-23 represent subject matter in the same or closely related field such that search and examination of the claims in Group I "can be made without serious burden to the Examiner." As such, Applicant requests that Examiner withdraw the restriction/election requirement and proceed with examination of the claims on the merits.

Applicant believes that the subject matter encompassed by the claims is patentable over the prior art, and notification to that effect is respectfully requested.

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CONCLUSION

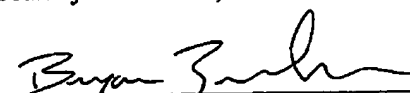
Applicant has made a *bona fide* attempt to address Examiner's grounds for restriction/election and honestly believes that this paper represents a complete response and an examination on the merits is respectfully requested.

If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

Applicant believes no fees are associated with entry of the present response. However, in the event that any fee has been inadvertently overlooked and is required, Commissioner is hereby authorized to charge any required fee or credit any overpayment to Deposit Account No. 50-3569.

Respectfully submitted,

Date: 7/7/06

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